Statement of Attorney Kelly E. Reardon
Regarding Senate Bill No. 445
AN ACT CONCERNING LIABILITY FOR THE RECREATIONAL USE OF LAND

March 29, 2012

Members of the Judiciary Committee:

My name is Kelly Reardon and I am an attorney in New London. Thank you for allowing me to testify in support of Senate Bill Number 445, An Act Concerning Liability for the Recreational Use of Land. I urge you to vote in favor of this bill because it closes a significant hole in the current text of the Recreational Land Use Act, Connecticut General Statutes § 52-557f through i, and protects the interests of those who rightfully expect that the parks, playing fields, playgrounds, pools and other public recreational areas that they use around Connecticut will be safe. That is because the proposed bill amends the definition of the term "land" in section 52-557f to include public beaches and boardwalks, as well as spectator areas and structures providing seating for spectators, and paved sidewalks open to the public for pedestrian use, amongst the areas in which municipalities can be held liable, just like all other businesses, landlords, homeowners and individuals in this state, for their negligence.

In light of the legislative and judicial history of recreational land use immunity in Connecticut and in light of the efforts that this body has made to strike a balance between protecting municipalities and protecting individuals, this amendment simply makes sense.

Currently, the definition of "land" in section 52-557f includes swimming pools, playing fields and courts, playgrounds and buildings, but it does not include beaches and boardwalks, sidewalks and spectator areas. In other words, the statute as written permits some users of public recreational areas to sue for their injuries and precludes others from doing so, depending on whether they are injured on one type of "land" or another.

Consider this – An eight-year-old girl competing in a swim meet at the pool at Ocean Beach Park in New London drowns when her hair gets caught in a swimming pool drain that the City maintenance department forgot to cover with an anti-entrapment device, as required under the Connecticut Public Health Code section 19-13-B33b. Under the current version of the Connecticut Recreational Land Use Act – her family is permitted to sue the City to recover for her wrongful death – as they rightfully should. The City is not immune from suit for injuries that occur at public pools.

However, that girl's grandmother, sitting on the bleachers watching the swim meet, who breaks her back and is paralyzed when a portion of those bleachers collapses out from under her because a City maintenance man was on his cell phone ordering a pizza when he was repairing a plank and didn't screw it in properly, cannot sue the City to recover for her injuries. She is out of luck – in a wheelchair for the rest

of her life, deprived of her rights because bleachers are not considered to be "land" under 52-557f.

That grandmother cannot sue – even if dozens of residents complained to the City about that broken plank every single week for an entire year before the accident happened. She cannot sue the City to recover for her injuries as her granddaughter can because, under the current law, the City is immune from suit for injuries sustained by spectators.

And what if the bleachers collapsed when they were full of spectators, killing dozens and injuring more? They are out of luck too. Under 52-557f, as written, municipalities cannot be sued by spectators.

Raised Bill Number 445 should be uncontroversial as it merely corrects this discrepancy by adding public beaches, boardwalks, designated spectator areas, structures to provide seating for seating for spectators at pools, beaches, boardwalks, fields, courts or playgrounds, and paved sidewalks open to the public for pedestrian use to the list of those public recreational areas that municipalities must reasonably maintain to protect the safety of those who use them.

Allow me to address a few questions you may be asking. First, "Why keep allowing more people to file 'frivolous' lawsuits against municipalities?" Many people believe lawsuits are "frivolous" until their child or spouse or best friend is injured because of the clear negligence of another party. They sit with me in my conference room and explain that they were wrong for years in assuming that all lawsuits are "frivolous." I then have to explain to them why they cannot sue the town for the death of their child because of a loophole in a statute that makes the town immune from suit. That is a conversation no victim should be forced to have.

Second, "Where do you draw the line in terms of who can sue and who can't?" My answer to that question is simple – you draw the line in a place that makes sense. You draw the line in a place that is not arbitrary. If you are going to allow the family of the girl who drowns in the swimming pool to sue, you should allow her family to sue if she is injured or killed while walking to the swimming pool on the adjacent boardwalk.

Third, "If so many people complained about those bleachers at Ocean Beach Park, can't the grandmother sue under section 52-557h?" That section, as you may know, allows lawsuits against municipalities when they have engaged in "willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity." Can't the grandmother sue under that statute?

In theory, she can, but good luck persuading any Judge in Connecticut to agree that those City employees – shorthanded and understaffed due to budget cuts – were willful and malicious when they failed to fix the bleachers. Under Connecticut law, willful and malicious conduct is more than negligence and more than gross negligence. It is more than a failure to exercise a reasonable degree of watchfulness to avoid danger or

to take reasonable precautions to avoid injury. Willful and malicious conduct is "a reckless disregard of the just rights or safety of others or of the consequences of the action." Dubay v. Irish, 207 Conn. 518, 532-33 (1988). I challenge you to find any Superior Court judge in Connecticut, or Appellate Court judge, or Supreme Court judge, who has held that the failure of a municipality to fix a broken plank on a set of bleachers is willful and malicious conduct. No such case exists.

This is not a radical amendment, but it is an important one that should be seriously considered by the Judiciary Committee and the entire General Assembly. Taxpayers have the right to expect safe recreational facilities be provided by their cities and towns. As legislators, I urge you to amend this bill to accurately reflect its true purpose. Please do not allow municipalities to avoid their responsibility to maintain safe facilities for their residents and taxpayers. And please do not allow some Connecticut residents to be afforded the protection of the law and the right to seek redress in our Courts, while others are denied justice.

Thank you very much.